

A less taxing alternative?

The traditional structure for a solicitors practice is not the only possible structure. Tax expert **David Price** examines the position and says that the alternative has significant attractions.

For most of the twentieth century one of the differentiating features of a “professional” was that they carried out their business in their own name, either as a sole-trader or in partnership. Other businesses – “the trades” – were generally carried out through limited liability companies. Historically the “professions” included solicitors, barristers, doctors, dentists, auditors, architects and stockbrokers. Now, ten years into the twenty first century, this position is changing rapidly for most of the other professions with solicitors and barristers remaining, depending on one’s viewpoint, as either the last bastions of true professionalism or anachronisms.

From this month, SI 220 of 2010 removes the prohibition on a limited company practising as an Auditor. The 7th edition of the Medical Council’s Guide to Professional Conduct and Ethics, published in 2009, has dropped its previous prohibition on doctors incorporating their practices. The introduction of the reduced cap on the amount of pension contributions that a self-employed professional may make for 2009 has led to many hospital consultants and GPs incorporating their practices. Section 52 of the Dentists Act 1985 still prohibits a body corporate from practising as a dentist but many dentists have moved over the last decade to incorporate aspects of their practices. Additionally a number of foreign-owned company dental franchises have set up in Ireland in recent years and it is unclear whether EU competition law is the reason that these have not been challenged. Whatever the reason, it is expected that the dentists will follow the doctors into a corporate existence in the near future and the lawyers will be left to stand alone.

The restrictions on solicitors practicing through a company are contained, primarily,

in Part VI of The Solicitors Act, 1954. Section 55 of the Act provides that “an unqualified person shall not act as a solicitor”, Section 64 (1) provides that “A body corporate or director, officer or servant thereof shall not do any act of such nature or in such manner as to imply that the body corporate is qualified, or recognised to be qualified, to act as a solicitor.” Section 58 lists certain types of work which may not be performed by any person who is not a solicitor.

It is clear from the Act, accordingly, that most aspects of the legal profession of a solicitor, other than a solicitor who is an employee of another solicitor, must be carried out in his personal capacity, whether as a sole trader or as a partner. There are, however, no prohibitions on solicitors carrying on business through a company; the prohibitions are merely on carrying on the business of a solicitor through a company.

Of course, some progressive or larger law practices have had some form of “back office” company structure in place for many years. More recently many other practices of varying size have followed suit. The tendency with most of these practices, however, has been to use the company almost exclusively as a pension-funding vehicle. This, profession-wide, tunnel vision is quite puzzling when one considers that the bread and butter work of most of the larger practices (the ones which had the companies first and set the trend) is corporate law. Corporate lawyers are well familiar with the tax advantages that companies have over the self employed. They advise their clients on these daily. Why, then do they not seek to take advantage for themselves? Probably this is no more than the usual reason – the cobblers children are the worst shod. Time, is at a premium in all law firms and the client gets the attention. Most solicitors think about their own tax position



once a year, in October. They complain, write one cheque for the pension and another for the tax and then go back to ensuring their clients’ tax savings are maximised.

So what are these tax advantages? The most immediately apparent advantage is, of course, the tax rate differential. One would think that having said 55% versus 12.5% there would not be a need to say much more but this differential in the tax rates is really only a small part of a number of taxation advantages which a company structure provides over a partnership or sole-practitioner structure. There is a wide variety of tax and commercial planning options available to a corporate structure which is not otherwise available to a solicitors’ practice. These would typically include tax-efficient termination payments for retiring “partners”, access to huge annual tax savings through the “bene-



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fit-in-kind” tax regime, a reduction of over 80% in the tax cost of “disallowed” expenses or capital costs, a 34% increase in the rate of tax deduction for pension contributions over that available for sole-traders or partners, access to employee type expense reimbursement, cash-flow management, tax rate shopping, a 200% to 300% increase in the amount of tax-deductible pension contribu-

tion, tax-efficient partner buy-in or exit arrangements and even inheritance tax planning advantages.

The full gamut of planning opportunities available in the corporate arena is, of course, vast and beyond the scope of any article but the above should give a flavour of why having a company as part of its business structure makes sense for most solicitor practices.

How such a company should be incorporated into a solicitors business and the legal, ownership, financial and administrative issues which arise will be dictated largely by the existing practice structure and the principals’ intentions for the company.

From this article I hope that the reader has gained an appreciation that the traditional structure for a solicitors practice is not the only possible structure and that the alternative has significant attractions. If not then please consider that a typical self-employed solicitor pays 50% or more of their income in taxes on every euro of profit above €36,400 (and this article was written before the December Budget speech). ●

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